

ATTORNEY FOR PETITIONER:  
**B. KEITH SHAKE**  
LOCKE REYNOLDS, LLP  
Indianapolis, IN

ATTORNEYS FOR RESPONDENTS:  
**STEVE CARTER**  
ATTORNEY GENERAL OF INDIANA  
**DAVID A. ARTHUR**  
DEPUTY ATTORNEY GENERAL  
Indianapolis, IN

---

**IN THE  
INDIANA TAX COURT**

---

RIETH RILEY CONSTRUCTION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 49T10-0208-TA-100
	)	
INDIANA BOARD OF TAX REVIEW,	)	
DEPARTMENT OF LOCAL GOVERNMENT	)	
FINANCE, ST. JOSEPH COUNTY	)	
ASSESSOR, and GREENE TOWNSHIP	)	
ASSESSOR,	)	
	)	
Respondents.	)	

---

ORDER ON RESPONDENTS' MOTION TO DISMISS

---

**NOT FOR PUBLICATION**

December 13, 2005

FISHER, J.

Rieth Riley Construction (Rieth Riley) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) denying its Petitions to Correct Error (Forms 133) for the 1994-1997 tax years (years at issue). The matter is currently before the Court on the Respondents' motion to dismiss. In their motion, the Respondents claim this Court lacks subject matter jurisdiction to hear this appeal because Rieth Riley's Forms 133 were not timely filed. While the Court rejects the Respondents' claim

that the Court lacks subject matter jurisdiction,<sup>1</sup> it must dismiss the case on other grounds. For the reasons stated below, the Court GRANTS the Respondents' motion.

### **FACTS, PROCEDURAL HISTORY AND DISCUSSION**

Rieth Riley owns an asphalt recycling facility in St. Joseph County containing equipment that converts removed asphalt (a solid waste) into useful products. On May 31, 1994, the Indiana Department of Environmental Management (IDEM) certified Rieth Riley's equipment as a resource recovery system (RRS) for the 1994 tax year.<sup>2</sup>

Effective May 1, 1995, the General Assembly eliminated the RRS deduction on a phased out basis. See 1995 Ind. Acts 25 §§ 15, 99(a). Consequently, Indiana Code § 6-1.1-12-28.5 was amended so that only those taxpayers who had their RRS certified prior to 1994 were eligible to receive the RRS deduction, on a phased-out basis, until

---

<sup>1</sup> The Respondents' motion asserts a lack of subject matter jurisdiction. (See *generally* Mot. to Dismiss.) "Subject matter jurisdiction is the power of a court to hear and determine the general class of cases to which the proceedings before it belong." *Musgrave v. State Bd. of Tax Comm'rs*, 658 N.E.2d 135, 138 (Ind. Tax Ct. 1995). A determination as to whether subject matter jurisdiction exists "depends on whether the type of claim advanced by the petitioner falls within the general scope of authority conferred upon the court by constitution or statute." *Id.*

The general scope of authority conferred upon the Tax Court is governed by Indiana Code § 33-26-3-1. This statute provides that the Tax Court has "exclusive jurisdiction over any case that arises under the tax laws of Indiana and that is an initial appeal of a final determination" of the Indiana Board. IND. CODE ANN. § 33-26-3-1(2) (West 2005). Rieth Riley's appeal meets both jurisdictional prerequisites: it challenges the assessment of Indiana's property tax and it requests review of a final determination of the Indiana Board. Accordingly, the Court has subject matter jurisdiction over this appeal.

<sup>2</sup> The owner of a RRS could receive a property tax deduction if the IDEM certified the system and the owner filed a claim for the deduction. See IND. CODE ANN. § 6-1.1-12-35 (West 1994) (repealed 2001). A taxpayer was required to file the claim each assessment year that it desired the RRS deduction. See A.I.C. § 6-1.1-12-35(a).

1997.<sup>3</sup> See P.L. 25-1995 § 15. See also IND. CODE ANN. § 6-1.1-12-28.5 (West 2000). After 1997, the deduction was no longer available to taxpayers. Taxpayers with an RRS first certified in 1994, however, were not eligible to receive any deductions. Thus, under the 1995 amendment, Rieth Riley did not qualify for an RRS deduction. See P.L. 25-1995 § 15.

This Court held that the 1995 amendment was unconstitutional as applied to a taxpayer whose RRS was first certified in 1994, because it violated Article 10, § 1, of the Indiana Constitution (the Property Taxation Clause). *Inland Container Corp. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1109, 1119 (Ind. Tax Ct. 2001) (explaining that the amendment allowed some taxpayers with comparable properties to obtain the deduction on a phased out basis, while others were altogether denied the deduction), *rev'd*, 785 N.E.2d 227 (Ind. 2003). See also IND. CONST. art. X, § 1 (requiring uniformity and equality in property tax assessment; uniformity and equality as to the rate of taxation; and a just valuation for taxation of all property). The Court, therefore, determined that the taxpayer was entitled to the benefit of the RRS deduction on a phased out basis. *Inland*, 756 N.E.2d at 1121.

Relying on the Court's holding in *Inland*, on November 13, 2001, Rieth Riley filed four Forms 133 (one Form each for 1994, 1995, 1996 and 1997) and claims for refund with the Greene Township Assessor (Assessor). Rieth Riley claimed that the revocation

---

<sup>3</sup> The amended statute allowed for a phased out deduction as follows: (1) ninety-five percent for the 1994 assessment year; (2) ninety percent for the 1995 assessment year; (3) seventy-five percent for the 1996 assessment year; (4) sixty percent for the 1997 assessment year. See IND. CODE ANN. § 6-1.1-12-28.5(d) (West 1995).

of its 1994 tax year deduction<sup>4</sup> and the failure to allow a deduction for the 1995-1997 tax years were errors subject to correction under Indiana Code § 6-1.1-15-12. See IND. CODE ANN. § 6-1.1-15-12 (West Supp. 2005-2006) (allowing for the correction of enumerated errors in an assessment). Rieth Riley also sought a refund of taxes paid as a result of being denied the deduction during the years at issue. Nevertheless, the Assessor, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) and the Indiana Board denied the petitions.

On August 2, 2002, Rieth Riley initiated an original tax appeal. On October 31, 2002, the Respondents filed a motion to dismiss for lack of subject matter jurisdiction on the grounds that Rieth Riley's Forms 133 were not timely filed. (See Resp't Mem. in Supp. of its Mot. to Dismiss at 3-6.) The Court conducted a hearing on the Respondents' motion on March 6, 2003 and took the matter under advisement.<sup>5</sup>

On March 21, 2003, the Indiana Supreme Court reversed this Court's holding in *Inland*, finding that the 1995 amendment to Indiana Code § 6-1.1-12-28.5 was not unconstitutional as applied to taxpayers whose RRS was first certified after 1993. See *State Bd. of Tax Comm'rs v. Inland Container Corp.*, 785 N.E.2d 227 (Ind. 2003).

---

<sup>4</sup> Rieth Riley claims it was allowed a deduction for 1994, but was later forced to repay taxes in connection with the revocation of that deduction. (Pet'r Br. in Opp. to Mot. to Dismiss at 2.) While nothing in the Certified Administrative Record supports this claim (i.e., no filed application for the deduction in 1994), the resolution of that fact is not necessary to resolve this case. Accordingly, the Court will, for purposes of this opinion, regard the claim as true.

<sup>5</sup> During the hearing, the parties agreed to waive the provisions of Indiana Trial Rule 53.1 (i.e., requiring a court to rule on a motion thirty days after it was heard), because the Indiana Supreme Court granted review of this Court's decision of *Inland* on February 26, 2002, but had not, at the time of the hearing, handed down its decision. (Oral Argument Tr. at 9-10, 24-25.) See *also* Ind. Trial R. 53.1.

Specifically, the Indiana Supreme Court stated, “[d]espite possible resulting brief interim disparities, there is no constitutional violation simply because tax policies applicable in one year are different from those applicable in another year, or because tax legislation may employ a transitional or graduated elimination of prior tax policies or implementation of new ones.” *Id.* at 230.

Given the Indiana Supreme Court’s ruling, and pursuant to Indiana Code § 6-1.1-12-28.5, Rieth Riley is not entitled to the RRS deduction for the tax years at issue. See A.I.C. § 6-1.1-12-28.5; *Inland*, 785 N.E.2d at 229-30. Accordingly, the timeliness of Rieth Riley’s petitions is now moot.

### **CONCLUSION**

For the foregoing reasons, this case must be DISMISSED.

SO ORDERED this 13th day of December, 2005.

---

Thomas G. Fisher, Judge  
Indiana Tax Court

#### Distribution:

B. Keith Shake  
LOCKE REYNOLDS, LLP  
P.O. Box 44961  
Indianapolis, IN 46244-0961

Steve Carter  
Attorney General of Indiana  
By: David A. Arthur (Allen R. Morford)  
Deputy Attorney General  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, IN 46204